



## Federal Update for January 12 - 16, 2015



### ***Operation Enduring Freedom Update ► Officially Ended Dec. 28, 2014***

Operation Enduring Freedom, the worldwide combat mission launched shortly after the terrorist attacks of Sept. 11, 2001, that eventually became synonymous with the 13-year war in Afghanistan, officially ended Sunday 28 DEC. The mission that took the lives of 2,356 U.S. service members was punctuated with a ceremony with military officials in Kabul and a statement from President Obama lauding the efforts of those involved. "On this day we give thanks to our troops and intelligence personnel who have been relentless against the terrorists responsible for 9/11 — devastating the core al Qaeda leadership, delivering justice to Osama bin Laden, disrupting terrorist plots and saving countless American lives. We are safer, and our nation is more secure, because of their service," Obama said in the written statement.

Up to 10,800 U.S. troops will remain in Afghanistan in 2015 and the mission will be renamed "Operation Freedom's Sentinel." Military officials say that will be a narrowly defined two-prong mission: advising the Afghan army and continuing to mount counterterrorism operations against the Taliban and other insurgents who may pose a threat to the U.S. or Afghan governments. Obama's current strategy calls for reducing the U.S. force level to about 5,000 in 2016 until a complete end of the military mission there before he leaves the White House in 2017.

The early years of OEF encompassed missions around the world. Many U.S. troops supporting the invasion of Iraq in 2003 were technically deployed under OEF orders. And it also included counterterrorism operations in Southeast Asia, North Africa and elsewhere. For years, the war operations in Afghanistan were comparatively small. U.S. troop levels there remained below 30,000 until 2008,

when the Taliban insurgency began gaining ground and threatening the American-backed government. U.S. troop levels peaked at around 100,000 in 2010. Pessimism about the military mission in Afghanistan has grown during the past several years.

According to a Military Times reader survey, the percentage of active-duty service members who say the U.S. ultimately is "very likely" or "somewhat likely" to succeed in Afghanistan has dropped from 76 percent in 2007 to 23 percent in 2014. A similar trend is reported among civilians. While the mission was overwhelmingly popular when it began in October 2001, a Gallup Poll in 2014 showed that about half of Americans believe sending troops to Afghanistan was a mistake. [Source: MilitaryTimes | Andrew Tilghman | Dec. 29, 2014 ++]

## ***MAVNI Program ► Special Foreign-born Recruiting to Resume***

After a months-long hiatus, a special immigration program designed to attract recruits with certain skills will be up and running once more in the next several weeks. Attorney Margaret Stock, an immigration lawyer and retired Army lieutenant colonel, said on 22 DEC that the Military Accessions Vital to the National Interest, or MAVNI, program could resume before the end of the year, but certainly in January. There has not yet been an announcement from the Defense Department. "I heard about it from some folks at the Pentagon. There's no public USAREC [U.S. Army Recruiting Command] message yet," Stock said. The program stalled in late September after President Obama's executive order on immigration opened up MAVNI to undocumented immigrants who came to the U.S. as children. According to Stock, the Defense Department is now on track to resume processing applications under MAVNI. "DoD has set the overall fiscal year quota for MAVNI at 1,500, and the Army has been allocated 1,300 slots for now," Stock wrote on the blog for Alaska-based law firm, Cascadia Cross Border Law Group. She does not know if the other services will utilize the program, noting that in 2013 the Air Force recruited only two people under MAVNI, both enlisted and brought in for their language skills. The Navy recruited one doctor under the program in 2009, when it began. Most MAVNI applicants have been doctors who enlist in the Army Reserve and receive an officer's commission once

they attained their U.S. citizenship. Foreign nationals who come in under MAVNI do not have to apply for a green card and their citizenship process is expedited. Some already in the Army now have to fight to keep their dependents in the U.S. with them. That's because U.S. Citizenship and Immigration Services decided it would no longer automatically grant spouses or children green cards once the service member became a citizen. The agency said the dependents must return to their home country and apply to come to the U.S. after two years, a policy that that will force military families apart, Stock said. Stock, who designed and successfully sold the Defense Department on the program about six years ago, said the Army will look to recruit 130 doctors. Another 100 critical language speakers will be recruited to the Army Reserve. The active-duty Army plans to recruit 1,070 enlisted soldiers who speak languages that are in short supply, as well, including Korean, Chinese, Tagalog, Russian and Portuguese, among others. [Source: Military.com | Bryant Jordan | Dec 26, 2014 ++]

## ***Military Child Custody Protection ► Deployment Issue***

When Kentucky guardsman Eva Slusher returned from her stateside deployment in 2004, she was welcomed home with news that she had lost custody of her daughter. A decade later, she finally has hope that no service member will ever have to go through that again. Tucked into this year's annual defense authorization bill passed by Congress is a provision preventing state judges from using military deployments against troops in child custody cases. It's the culmination of an eight-year fight for Slusher and Rep. Mike Turner (R-OH) who say the change is needed to stop judges from using military service against troops in such cases. "It's not that my military service wasn't taken into consideration, or that I didn't get some extra boost from my service," Slusher said. "I'm not looking to be hailed as a hero because I served my country. I'm looking for not being penalized for military service. A judge now can't say that the military lifestyle isn't conducive to raising children."

The new rules mandate that child custody cases cannot be altered during a parent's military deployment, and that any pre-deployment custody arrangements remain in place upon the parent's return. Exceptions can be made when the situation "goes against the best interest of the child," but Turner said often judges with little familiarity with the military have ruled that the uncertain

nature of deployments made for a negative home situation in split families. “In the end, this is about making sure that [troops] don’t serve at the expense of their families,” he said. “They deserve to be protected.”

A decade ago, when her daughter Sara was 10, then-Capt. Slusher was mobilized as part of the Kentucky National Guard. She worked out a temporary guardianship agreement with her ex-husband, to ensure he could take care of any medical or school issues. But upon her return, he challenged her custodial rights. A state judge made him primary guardian, citing Slusher’s past and potential military responsibilities. “I didn’t realize there was even a possibility that could happen ...,” she said. “There were laws that protected my job and my home, and my mortgage interest rates, and my cellphone contract [during deployment], but not my children?” Slusher waged a two-year legal fight that went all the way to the Kentucky Supreme Court to win back custody of Sara. Since then, she has pushed for a national law to prevent other service members from facing the same heartbreak. “This is about having peace of mind,” Slusher said. “When you’re deployed, there are so many things to deal with. Worrying about your kids shouldn’t be one of them. [Source: NavyTimes | Leo Shane | Dec. 29, 2014 ++]

## ***Military Mortgage Foreclosure Relief ► Up to 1-yr After Separation***

Towards the end of the 113th Congress lawmakers unanimously approved legislation Senator Whitehouse (D-RI) and Rep. Alan Grayson (D-FL) to protect servicemembers from foreclosure. The measure extends until January 2016 a provision that ensures troops who serve on active duty are protected against losing their home for one year following the completion of their service. In 2008, Congress first extended the period of foreclosure protection under the Servicemembers Civil Relief Act (SCRA) from 90 days to 9 months in response to a report by the Commission on the National Guard and Reserves. The report found that “the threat of foreclosure is a stressor that need not be placed on members of the armed forces during the first months of their return to civilian life.” The original bill sought to make the one-year protection permanent law in the SCRA, an objective still sought by The Military Coalition. The extension largely affects members of the National Guard and Reserves called to active duty. As of December, almost 29,000 Guard and Reserve members are serving on active duty

and over 902,000 have served on active duty since September 11, 2001. [Source: MOAA Leg Up Dec.19, 2014 ++]

## ***TRICARE/Medicare Combined Benefit Update ► Fact Sheet***

TRICARE Beneficiary Publications Office has updated the TRICARE and Medicare Under Age 65 Fact Sheet. The updated fact sheet has been posted to the TRICARE SMART Site, [www.tricare.mil/SMART](http://www.tricare.mil/SMART). You can also download the fact sheet at <http://go.usa.gov/2PpT>.

### **Remaining TRICARE-eligible when you become Medicare-eligible before age 65.**

If you are entitled to premium-free Medicare Part A before age 65, you may need to have Medicare Part B coverage in order to keep your TRICARE benefit. The charts at <http://go.usa.gov/2PpT> take into account the reason for your Medicare eligibility and your sponsor's status and will help you determine if you must have Medicare Part B to keep TRICARE. Depending on your eligibility status, you may be eligible to use one of the following. For more information, visit <http://www.tricare.mil/tfl>.

- **TRICARE Prime:** If you are entitled to Medicare Part A, you may remain enrolled in TRICARE Prime until reaching age 65, as long as all eligibility requirements continue to be met. Additionally, if you are 65 or older, you may remain in TRICARE Prime if you have an active duty sponsor. Active duty service members (ADSMs) must be enrolled in TRICARE Prime regardless of Medicare entitlement status. ADSMs and their family members entitled to Medicare Part A can avoid paying the Medicare Part B late-enrollment monthly premium surcharge by enrolling during their Part B special enrollment period (SEP) (does not apply to those with end-stage renal disease [ESRD]). The SEP is available anytime while the sponsor is on active duty and you are covered by TRICARE, or within the first eight months following either (1) the month your sponsor's active duty status ends or (2) the month TRICARE coverage ends, whichever comes first. To avoid a break in TRICARE coverage, ADSMs and active duty family members must sign up for Part B before the sponsor's active duty status ends. Regardless of age, retired service members and their family members who

are entitled to premium-free Part A must have Part B to remain TRICARE-eligible.

- **TRICARE For Life (TFL):** TFL is Medicare-wraparound coverage for TRICARE beneficiaries who have both Medicare Part A and Medicare Part B, regardless of age or place of residence. When using Medicare providers, TFL beneficiaries typically have no out-of-pocket costs for services covered by both Medicare and TRICARE. When health care services are covered only by Medicare, TRICARE pays nothing and you are responsible for the Medicare deductible and cost-shares. When health care services are only covered by TRICARE, Medicare pays nothing and you are responsible for the TRICARE deductible and cost-shares. Medicare does not pay for health care services you receive from providers who opt out of Medicare. When you see an opt-out provider, TFL pays the amount it would have paid (normally 20 percent of the allowable charge) if Medicare had processed the claim; you are then responsible for paying the remainder of the billed charges. Veterans Affairs (VA) providers cannot bill Medicare and Medicare cannot pay for services received from the VA. If you are eligible for TFL and VA benefits and elect to use your TFL benefit for non-service connected care, you will incur significant out-of-pocket expenses when seeing a VA provider. By law, TRICARE can only pay up to 20 percent of the TRICARE-allowable amount. If you receive care at a VA facility, you may be responsible for the remaining amount. When using your TFL benefit, your least expensive option is to see a Medicare-participating or Medicare nonparticipating provider. If you want to seek care from a VA provider, check with Wisconsin Physicians Service, which administers the TFL benefit, to confirm coverage details.
- **TRICARE Reserve Select (TRS), TRICARE Retired Reserve (TRR), and the US Family Health Plan (USFHP):** TRS, TRR, and USFHP enrollees entitled to premium-free Medicare Part A are not required to have Medicare Part B to keep TRS, TRR, or USFHP. However, these enrollees are strongly encouraged to enroll in Part B when first eligible to avoid paying the premium surcharge should they sign up at a later date. Enrollment in TRS or TRR does not qualify beneficiaries for a SEP. USFHP enrollees with an active duty sponsor will be eligible for a SEP (unless you have ESRD).

**Important Payment Information.** Your Medicare Part B premium is automatically taken out of your monthly Social Security Disability Insurance (SSDI) or U.S. Railroad Retirement Board payment. If you do not get payments from these programs, you will receive a bill for your Part B premiums every three months. Note: If you live in Puerto Rico, and already receive benefits from the Social Security Administration or the U.S. Railroad Retirement Board, you will automatically receive Medicare.

**Tricare Pharmacy Program.** There is usually little or no benefit to purchasing a Medicare prescription drug plan if you have TRICARE. Medicare Part D is not required to remain TRICARE-eligible. The TFL Pharmacy Pilot requires TFL beneficiaries living in the United States and U.S. territories who use select maintenance medications to fill those prescriptions using TRICARE Pharmacy Home Delivery or a military pharmacy. You will be notified if you are impacted by this pilot. The pilot is required under the 2013 National Defense Authorization Act. Call 1-877-363-1303 or visit <http://www.tricare.mil/tflpilot> for more information.

**Returning to Work and Entitlement to Medicare.** If your SSDI payments have been suspended because you have returned to work, be advised that you remain entitled to Medicare for up to 8½ years. You will receive a quarterly bill for your Medicare Part B premiums. Failure to pay these premiums will result in the termination of your Part B and TRICARE coverage. [Source: TRICARE Communications | Dec. 12, 2014 ++]

## ***Hospital Observation Care ► Medicare Considers Outpatient Service***

Why You Should Beware When The Doctor Wants To Hold You For “Observation”. Most people who spend the night in the hospital would say they have been an inpatient. But over the past six years, rapidly growing numbers of Medicare beneficiaries have learned that they were never admitted as an inpatient — even though they have stayed in a hospital bed, received treatment, diagnostic tests, and drugs. Instead they learned they received observation care, which is considered an outpatient service, and is billed under Medicare Part B. With that designation, patients can have higher out-of-pocket costs even though they may have the very same health problems as people admitted as inpatients.



A study by the Health Care Cost Institute found that people receiving observation and other outpatient services in the hospital paid four times more out-of-pocket than inpatients in 2012— an average of \$47 per inpatient versus \$199 for outpatients. Under Medicare, outpatients usually have co-payments or co-insurance for each service from doctors, test, prescription drug, and other hospital services. Worst of all, patients don't qualify for Medicare coverage of follow-up nursing home care, because Medicare requires three consecutive days in the hospital as an "inpatient." That leaves the patient and their families on their own to figure out how to pay nursing home bills, or to go without. The number of observation patients has exploded 88 percent over the past six years, according to the Medicare Payment Advisory Commission. Medicare has tightened rules for hospital admissions, and usually won't pay for admitted patients who should have been designated as observation status. Consequently, hospitals have increased their share of observation patients. But the rule is not the same for people's private insurance like Medicare Advantage. Most Medicare Advantage plans don't require their enrollees to have a three-day hospital admission in order to receive nursing home coverage, according to an analysis by Avalere Health research firm.

The Senior Citizens League (TSCL) believes the increased use of observation stays is denying Medicare beneficiaries access to medically necessary skilled nursing care. All days spent in a hospital should count toward Medicare's three-day hospital stay requirement. TSCL supports the Improving Access to Medicare Coverage Act (H.R.1179) introduced by Representatives Joseph Courtney (CT-D-02) and Tom Latham (IA-R-03), and (S.569) introduced by Senators Sherrod Brown, (OH-D) and Susan Collins (ME-R). The legislation would deem time an individual spends under observation status eligible towards satisfying Medicare's three-day requirement. [Source: TREA Benefit Bulletin Dec. 11, 2014 ++]

## ***113th Congress Update ► Not the Least Productive in History***

Congratulations, 113th Congress, you were not the least productive in history. But it was close. Despite a sluggish pace for most of the last two years, a flurry of legislative activity during the lame duck elevated it to only one of the least productive Congresses in recent history. Congress enacted 297 new laws (including the measures currently awaiting President Obama's signature). Despite



predictions from many congressional observers, that is not the fewest bills enacted by a Congress since 1947. It is, however, second only to the 112th Congress, when 284 laws were enacted, according to an analysis from Josh Tauberer, at GovTrack. "Through November, it was going to be the least productive Congress in terms of bills enacted," Tauberer said. But Congress picked up the pace during the lame-duck session, passing a flurry of bills, including the massive spending bill called the "Cromnibus."

That is not unusual, said Senate historian Donald Ritchie. He pointed to an excerpt from the journal of Sen. William Maclay of Pennsylvania, who after the first Congress complained that several bills had been passed hastily on the last day of session. "Nothing has changed in that sense," Ritchie said. "The legislative calendar stretches out, and then it squeezes closed like an accordion." In terms of total votes in each chamber, the 113th Congress sits in the middle of the pack. The House voted 1,204 times to the Senate's 657. It is typical for the House to pass many more bills than the Senate, experts noted. House Republicans have been wont to blame the gridlock on the Senate, where far fewer bills passed, and where, they note, even bipartisan bills like a reauthorization of terrorism-risk insurance or a measure spurring action on the Keystone XL oil pipeline have died. But Ritchie said that is not entirely accurate. The Senate passed several large, bipartisan bills that the House did not take up, including measures dealing with immigration, transportation policy, and postal reform.

"None of that got through the House of Representatives," Ritchie said. "The House just had a very different way of looking at things and didn't produce their own versions of those bills." However, Ritchie, Tauberer, and several historians and data scientists interviewed for this story noted that simply counting the number of bills passed does not paint a full picture of congressional productivity. One reason is that the trend lately has been to pass massive bills that touch myriad issues, much like the year-end Cromnibus. "The Affordable Care Act was one bill. Naming a post office is a second bill. Are they equal? No," said Brad Fitch, president and CEO of the Congressional Management Foundation. Based on various other subjective metrics, though, the 113th Congress was one of the least productive in history.

To delve further into the numbers, Sarah Binder, a senior fellow at the Brookings Institution, uses a different analysis. She has made note of every issue discussed

in The New York Times' unsigned editorials going back to 1940—regardless of whether the editorial board was in favor or not—and compares that with the issues Congress takes up. She then assigns each Congress a gridlock score based on the percentage of the issues of the day that are not legislated upon. The 112th Congress, according to Binder's analysis, had a gridlock score of more than 70 percent, and Binder said that although she has not yet completed her analysis of the 113th Congress, she suspects the score will be similar. "We're basically talking the same level of deadlock. The same issues: immigration, post office reform, climate change, corporate tax reform. ... Even on Dodd-Frank repeal, Obamacare repeal ... they did very few real big things in the end," she said.

David Mayhew, a political science professor at Yale University, runs a similar analysis. He makes note of legislation mentioned by journalists in articles summarizing the work of each Congress and bases that Congress's productivity on how many major pieces of legislation are enacted. He pointed to the 113th Congress's passage of the Omnibus, the farm bill, the Violence Against Women Act, Veterans' Affairs changes, and the Budget Control Act, but noted that this Congress's productivity was relatively, although not historically, meager. "It's not a long list," he said. "This is a pretty low-action Congress, but it's not uniquely low." So where does the 113th Congress stack up historically? It is not in very esteemed company. Both Mayhew's and Binder's analyses put the 113th on par with those that were brought to a grinding halt by national crises. For instance, both experts said this past Congress enacted major legislation at roughly the same clip as the 106th Congress, the last of President Clinton's second term, which was marred by a sex scandal and impeachment.

Mayhew adds to the list the 82nd Congress, during which President Truman was guiding the country through the Korean War. And Binder's work places the 113th Congress's gridlock score not far ahead of both the 102nd Congress, during which the Gulf War started, and the 108th, when the United States again invaded Iraq. None of the metrics are airtight, congressional experts noted. But they do explain a general sentiment among the country, reflected in protest rallies and congressional approval ratings, that the 113th Congress was not functional. "We can use the numbers to substantiate our impressions of Congress," Tauberer said. "We know that finding consensus in the last two Congresses has been difficult, and the numbers substantiate that." [Source: National Journal | Daniel Newhauser | Dec. 23, 2014 ++]

## ***Applications Accepted for 2015 National Veterans Wheelchair Games***

The Department of Veterans Affairs (VA) is accepting applications for the 2015 National Veterans Wheelchair Games. Registration began in early January and will close April 15.

The National Veterans Wheelchair Games is a sports and rehabilitation program for military service Veterans who use wheelchairs for sports competition due to spinal cord injuries, amputations or certain neurological problems. Each year, hundreds of disabled Veterans travel from around the country to compete in the Games, which is the largest annual wheelchair sports event in the world. With them, they bring the fighting spirit and tenacity that defines the Veterans of our Armed Forces.

“I encourage all eligible Veterans to take this opportunity to prove yet again that disability does not mean inability,” said VA Secretary Robert McDonald.

Competitive events at the National Veterans Wheelchair Games include air guns, archery, basketball, bowling, field events, hand cycling, a motorized wheelchair rally, nine-ball, power soccer, quad rugby, slalom, softball, swimming, table tennis, track, trapshooting and weightlifting. Athletes compete in all events against others with similar athletic ability, competitive experience or age.

The 2015 National Veterans Wheelchair Games will take place in Dallas, Texas, from June 21-26. The Games are cosponsored by VA and Paralyzed Veterans of America, VA's partner in this annual event since 1985. For more information, please visit [www.wheelchairgames.org](http://www.wheelchairgames.org) and follow VA Adaptive Sports on Twitter at @VAAdaptiveSport.

## ***VA Announces the Appointment of New Members to Advisory Council***

The Department of Veterans Affairs (VA) is announcing the appointment of new members to the Research Advisory Committee (RAC) on Gulf War Veterans' Illnesses.

VA will appoint Stephen L. Hauser, MD as committee chair for a term through September, 2016. Dr. Hauser is the Robert A. Fishman Distinguished Professor and Chair of the Department of Neurology at the University of California, San Francisco. A neuroimmunologist, Dr. Hauser's research has advanced the understanding of the genetic basis, immune mechanisms and treatment of multiple sclerosis.

Additional appointees include Ronnie D. Horner, PhD, who is a Professor of Epidemiology in the Department of Health Services Policy and Management at the Arnold School of Public Health, University of South Carolina; Frances E. Perez-Wilhite, a former US Army Officer who served as a Lieutenant in Desert Shield in 1990; and Scott S. Young, MD, a former Navy flight surgeon during the Gulf War, who currently heads Kaiser Permanente's Care Management Institute, an organization dedicated to creating and supporting high quality care delivery programs. These new members will serve terms through September 2017. "VA is incredibly excited about the fresh perspective these new members will bring to the RAC, and we will continue to invest in research to understand and treat Gulf War Veterans' illnesses," said Secretary McDonald.

VA will also begin a study to examine brain cancer in Gulf War Veterans. The formation of the study was prompted by a discussion between VA Secretary Robert A. McDonald and members of the RAC. The members expressed concerns over the possible association between exposure to chemical nerve agents and brain cancer in Gulf War Veterans.

"Formation of this workgroup of VA subject matter experts to study research literature on the incidence of brain cancer in Gulf War Veterans is the latest VA effort on their behalf," said Secretary McDonald.

Some Veterans may have been exposed to chemical weapon agents during the demolition of the munitions depot in Khamisiyah, Iraq, in March 1991 after the Gulf War ceasefire. VA expects to complete the brain cancer study by the spring. The RAC was established by section 104 of Public Law 105-368 to provide advice to VA on proposed research studies, research plans or research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the 1990-1991 Gulf War (Operations Desert Shield and Desert Storm). The Committee periodically releases reports that summarize and make recommendations regarding research on the health of Gulf War Veterans.